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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Commissioner

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

2009 APR -8 P 4: 36

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF  
GARKANE ENERGY COOPERATIVE, INC.  
FOR APPROVAL TO EXTEND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO INCLUDE COLORADO  
CITY, ARIZONA.

DOCKET NO. E-01891A-08-0598

STAFF'S POST-HEARING EXHIBIT

On December 12, 2008, Garkane Energy Cooperative, Inc. ("Garkane") filed before the Arizona Corporation Commission ("Commission") an application to extend its Certificate of Convenience and Necessity ("CC&N") to provide electric service to Colorado City, Arizona.

In its application, Garkane seeks permission to resume serving a territory it had previously served. To do so, Garkane will re-purchase assets, previously owned by Garkane but later the subject of a successful condemnation action by Colorado City. Presently the assets are being used to serve that city's customer base. Difficulties in administering the utility, however, have led Colorado City to reconsider its previous action and to offer for sale back to Garkane all of the assets previously condemned, along with any improvements put in place since the transfer.

Before it filed the instant application, Garkane sought and received from the Utah Public Service Commission permission to borrow funds to be used for the purchase.

On February 10, 2009, the Commission's Hearing Division issued a Procedural Order setting hearing in this matter for April 3, 2009.

On April 3, 2009 a full public hearing was conducted. At the close of hearing, the Hearing Division directed counsel for Staff to file, on or before, April 7, 2009, an opinion regarding the necessity for Garkane to seek Commission approval of the financing that it had secured through the Utah Commission.

Staff counsel hereby provides the requested opinion.

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Arizona Corporation Commission

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1 Staff believes that Decision No. 53560, attached as Exhibit 1, provides some guidance in the  
2 resolution of the instant matter. In docket number U-1551-82-263, which resulted in the  
3 Commission's issuance of Decision No. 53560, Southwest Gas ("SWG") requested that "the  
4 Commission issue an order declaring that it is without jurisdiction to require submission and approval  
5 of SWG security issues."

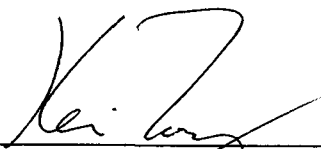
6 In that matter, SWG raised capital through the issuance of stocks on the New York Stock  
7 Exchange. Like Garkane, SWG operates its utility business in multiple states. Neither utility  
8 believed that the Commission had jurisdiction over the underlying financial transaction.

9 While the facts of the underlying case do not directly mirror the facts of the instant matter,  
10 Staff feels that Decision No. 53560 may provide some guidance in resolving the instant issue.

11 In addition, Staff believes that a determination of whether or not the funds raised in the instant  
12 matter could potentially result in an encumbrance of the Arizona assets may be relevant. Staff has  
13 requested the documentation of the underlying financing application and resulting approval and will  
14 evaluate those documents upon receipt.

15 At this time, however, Staff does not believe it is necessary to review the underlying Utah  
16 financing application in order to reach a decision in the instant application.

17 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of April, 2009.

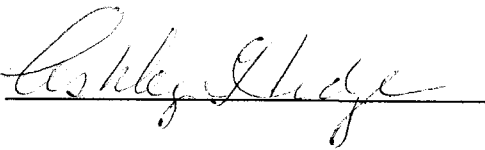
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21 Kevin O. Torrey SBN#022300  
22 Attorney, Legal Division  
23 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

24 Original and thirteen (13) copies  
25 of the foregoing were filed this  
8<sup>th</sup> day of April, 2009 with:

26 Docket Control  
27 Arizona Corporation Commission  
1200 West Washington Street  
28 Phoenix, Arizona 85007

1 Copy of the foregoing mailed this  
2 9<sup>th</sup> day of April, 2009 to:

3 Michael M. Grant  
4 GALLAGHER & KENNEDY, P.A.  
5 2575 East Camelback Road  
6 Phoenix, Arizona 85016-9225  
7 Attorney for Garkane Energy Cooperative, Inc.  
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A handwritten signature in cursive script, reading "Ashley I. Hage", is written over a horizontal line.

## **EXHIBIT 1**

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 18 1983

DIANE B. McCARTHY  
Chairman  
BUD TIMS  
Commissioner  
RICHARD KIMBALL  
Commissioner

DOCKETED BY

CB

DOCKET NO. U-1551-82-263

DECISION NO. 53560

OPINION AND ORDER

IN THE MATTER OF THE APPLICATION OF  
SOUTHWEST GAS CORPORATION FOR  
DECLARATORY ADJUDICATION THAT THE  
COMMISSION IS WITHOUT JURISDICTION  
OVER SOUTHWEST GAS CORPORATION'S  
SECURITIES ISSUES.

DATE OF HEARING: December 17, 1982

PLACE OF HEARING: Phoenix, Arizona

HEARING OFFICER: Wm. R. Giese

APPEARANCES: Jennings, Strouss & Salmon, by Thomas J. Trimble, Attorneys  
for Southwest Gas Corporation

John Byrne, Financial Analyst, Utilities Division, Arizona  
Corporation Commission

FINDINGS OF FACT

1. Southwest Gas Corporation (SWG) is a California corporation and is engaged in the business of distributing and selling natural gas in certain portions of Pinal, Gila, Greenlee, Mohave and Pima Counties, Arizona, as a public utility subject to the jurisdiction of the Commission. Applicant is also engaged in the intrastate transmission, sale, and distribution of natural gas as a public utility in certain portions of the states of Nevada and California and is a "natural gas company," within the meaning of the Natural Gas Act, subject to the jurisdiction of the Federal Energy Regulatory Commission with respect to interstate transmission facilities and sales of natural gas for resale on its northern Nevada system.

2. SWG has submitted an application requesting that the Commission issue an order declaring that it is without jurisdiction to require submission and approval of SWG security issues.

3. SWG is a foreign corporation involved in interstate commerce. SWG is engaged

1 in operations involving interstate commerce by means of:

2 (a) purchasing natural gas in interstate commerce for distribution  
3 to gas utility customers in three (3) states, including Arizona;

4 (b) providing administrative, accounting, engineering and other  
5 services to its operating divisions in northern California,  
6 northern Nevada, southern Nevada, central Arizona and  
7 southern Arizona;

8 (c) providing financing for the ongoing public utility operations  
9 of its operating divisions by means of equity and debt financing  
10 which are issued and sold in commerce between the states and  
11 are subject to the federal securities laws;

12 (d) Applicant owns gas gathering facilities in the states of New  
13 Mexico and Colorado and purchases gas dedicated in interstate  
14 commerce under the Natural Gas Act and resells such gas in  
15 interstate commerce. The activities of Applicant are subject  
16 to the jurisdiction of and regulation by the Federal Energy  
17 Regulatory Commission (FERC).

18 (e) Applicant operates interstate pipeline systems between Nevada  
19 and California. These activities of Applicant are subject to  
20 the jurisdiction of and regulation by the FERC.

21 4. The common stock, \$1.00 par value, of SWG is listed on the New York Stock  
22 Exchange as traded in interstate commerce. The SWG common stock is registered pursuant  
23 to Section 12(B) of the Securities and Exchange Act of 1934 and Applicant's \$2.30 preference  
24 stock is registered pursuant to Section 12(G) of the same Act. Accordingly, SWG is subject  
25 to the jurisdiction of the Securities and Exchange Commission with respect to the informa-  
26 tion filing requirements under the Act.

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CONCLUSIONS OF LAW

1. SWG is a foreign public service corporation doing business in the State of Arizona and is engaged in interstate commerce with intrastate utility operations in Arizona.

2. A.R.S. §§ 40-301 through 40-303 are not applicable to the issuance by SWG of its securities, including stock, bonds, notes and other evidences of indebtedness, since if this Commission exercised regulatory supervision over such security issues, it would create an impermissible burden on interstate commerce in violation of the United States Constitution, Article I, Section 8, Clause 3. United Airlines, Inc. v. Illinois Commerce Commission 32 Ill. 2d 516, 207 N.E.2d 433 (1965); State ex rel Utilities Commission v. Southern Bell Telephone and Telegraph Co., 288 N.C. 201, 217 S.E.2d 543 (1975); Opinions of the Arizona Attorney General No. 69-10 (R-66) (March 14, 1969).

ORDER

WHEREFORE, IT IS ORDERED: That the application of Southwest Gas Corporation for declaratory adjudication, that the Commission is without jurisdiction over its security issues be and hereby is granted.

IT IS FURTHER ORDERED: That the Arizona Corporation Commission is without jurisdiction to require security issues of Southwest Gas Corporation, be submitted to and approved by the Commission.

IT IS FURTHER ORDERED: That this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

*David H. McCarthy*  
CHAIRMAN

*Robert L. ...*  
COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, LORRIE DROBNY,  
Executive Secretary of the Arizona Corporation  
Commission, have hereunto set my hand and caused  
the official seal of this Commission to be affixed at  
the Capitol, in the City of Phoenix, this 15th day  
of May, 1983.

*Lorrie Drobný*  
LORRIE DROBNY  
Executive Secretary